



# Microsoft Select **Agreement** - State and Local

(NOT FOR USE WITH MICROSOFT BUSINESS AGREEMENT)

Select Agreement number  
Microsoft affiliate to complete

01866600

This Microsoft Select Agreement is entered into between the following entities. Each party will notify the other in writing if any of the information in the following table changes.

<b>Customer</b>	
Name of Entity <i>State of Iowa</i>	Contact Name (This person handles access to online information and receives notices unless a different contact is below.) <i>Ashley Super</i>
Street Address <i>% DAS GSE, Hoover Bldg</i>	Contact E-mail Address (required for online access) <i>ashley.super@iowa.gov</i>
City <i>Des Moines, IA</i> State/Province	Phone <i>515-281-7073</i>
Country <i>USA</i> Postal Code <i>50320</i>	Fax <i>515-242-5974</i>
Microsoft Account Manager Name <i>Martha Combs</i>	Microsoft Account Manager E-mail Address <i>mcombs@microsoft.com</i>
<b>Contracting Microsoft Affiliate</b>	
Microsoft Licensing, GP - 6100 Neil Road, Suite 210 - Reno, Nevada USA 89511-1137 - Dept. 551, Volume Licensing	

**If online access and notices should be provided to someone or some place other than above, complete this section:**

Name of Entity	Contact Name
Street address.	Contact E-mail Address (required for on-line access)
City State/Province	Phone
Country Postal Code	Fax

**If duplicate electronic contractual notices should be provided to someone or some place in addition to the above, complete this section:**

Name of Entity	Contact Name
Street Address	Contact Email Address (required for electronic notices)
City State/Province	Phone

This agreement consists of (1) this cover page, (2) the attached terms and conditions, (3) the attached Select Volume Forecast Form, (4) the Product List, (5) the product use rights applicable to products licensed under this agreement, and (6) any enrollment entered into under this agreement.

**Effective date.** If the first enrollment entered into under this agreement is given an effective date that is earlier than the date this agreement is signed by us, the effective date of this agreement will be that earlier date. Otherwise, this agreement will be effective on the date it is signed by us.

<b>Notices to Microsoft should be sent to:</b>	<b>Copies should be sent to:</b>
Microsoft Licensing, GP 6100 Neil Road, Suite 210 Reno, Nevada USA 89511-1137 Dept. 551, Volume Licensing	Microsoft Law and Corporate Affairs One Microsoft Way Redmond, WA 98052 USA Volume Licensing Group (425) 936-7329 fax

By signing below, the parties agree to be bound by the terms of this agreement, and you represent that the information you have provided on this cover page is accurate.

<b>Customer</b>	<b>Contracting Microsoft Affiliate</b>
Name of Entity <i>State of Iowa</i>	Microsoft Licensing, GP
Signature <i>X Debbie O'Leary</i>	Signature <i>[Signature]</i>
Printed Name <i>Debbie O'Leary</i>	Printed Name <b>Brandon Pickard</b>
Printed Title <i>Administrator</i>	Printed Title <b>Contract Administrator</b>
Signature Date <i>5/24/04</i>	Signature Date (date Microsoft affiliate countersigns) <i>6-11-04</i>
	Effective Date (may be different than our signature date) <b>JUN 10 2004</b>

## **Terms and Conditions**

### **1. Definitions.**

In this agreement, "you" means the entity that has entered into this agreement with us, and "we" or "us" means the Microsoft entity that has entered into this agreement or an enrollment. In addition, the following definitions apply:

"affiliate" means (a) with regard to you, (i) any government agency, department, instrumentality, division, unit or other office of your state or local government that is supervised by or is part of you, or which supervises you or of which you are a part, or which is under common supervision with you; (ii) any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of your state and located within your state's jurisdiction and geographic boundaries; and (iii) any other entity in your state expressly authorized by the laws of your state to purchase under state contracts; provided that a state and its affiliates shall not, for purposes of this definition, be considered to be affiliates of the federal government and its affiliates; and (b) with regard to us, any legal entity that we own, that owns us, or that is under common ownership with us;

"available" means, with respect to a product, that we have made licenses for that product available for ordering under the Select License program;

"enrolled affiliate" means an entity, either you or any one of your affiliates, that has entered into an enrollment under this agreement;

"enrollment" means the document that you or your affiliate submits under this agreement to sign up for the Select License program;

"fix(es)" means product service packs and other fixes that we release generally;

"License" means any one of those offerings identified in the Product List (including standard licenses, and upgrades for desktop operating systems) that provides the right to run the version of the product for which it is ordered;

"L&SA" means a License and Software Assurance for any product ordered;

"product" means any product available to license as described on the Product List;

"Product List" means, with respect to any licensing program, the statement published by Microsoft from time to time on the World Wide Web at <http://microsoft.com/licensing> or at a successor site that we identify which identifies the products that are or may be made available under each of the volume licensing programs (which availability may vary by region), and any product-specific conditions or limitations on the acquisition of licenses for those products;

"renewal order" means the order that an enrolled affiliate submits at the beginning of any renewal term to renew Software Assurance coverage for products previously ordered under its enrollment;

"reseller" means a large account reseller authorized by us to resell licenses in an enrolled affiliate's area under the Select License program;

"run" or "use" means to copy, install, use, access, display, run or otherwise interact with; and

"Software Assurance" means, for any underlying licensed product for which it is ordered, the right to upgrade to, and run, the latest version of that product that we make available during the covered period.

### **2. How the Select License program works.**

The Select License program allows customers to license our products at discount pricing based on the volume of their license purchases. You and your affiliates can participate in this program by submitting one or more enrollments under this agreement. Once enrolled, the enrolled affiliate will receive master copies of products it intends to license and may run as many copies as it wishes during the term of its

enrollment, provided it places monthly orders for those copies. We may refuse to accept an enrollment if we have a business reason for doing so. Product support is not included with the licenses under this agreement. Notwithstanding any other provision of this agreement, only enrolled affiliates identified in an enrollment will be responsible for complying with the terms of that enrollment, including the terms of this agreement incorporated by reference in that enrollment.

**a. Establishing price levels.** Each product offering is assigned a point value on the Product List and is assigned to one of the following pools: applications, systems or servers. Your price level for each pool will be based on the points earned for all orders placed from that pool, and will apply to all enrollments under this agreement. Your initial price levels are established by completing the Select Volume Forecast Form, which allows you to either (i) forecast license purchases to be placed under all enrollments by product pool, or (ii) in some cases, base your initial price level on orders made under our Enterprise Agreement program. Once established, price levels may be adjusted from time to time based on actual license purchase volume, as described in subsection 2(b) (Price level adjustments) below. Your price level will be used to determine the prices we will use to invoice each enrolled affiliate's reseller for product licenses that enrolled affiliate orders.

**b. Price level adjustments.** We may adjust price levels as described in this subsection.

**Pools for which your price level is based on a forecast.** For any pool for which you used a forecast on the Select Volume Forecast Form to establish your initial price level (see "Option 1" of that Form), we will review your price levels annually as follows. On every anniversary of the effective date of this agreement, including anniversaries during any renewal term, we will determine the price level for which you are eligible based on actual points earned in each pool by all enrolled affiliates during the previous three years. If this price level is different from your current level we will adjust your price level up or down. For the first anniversary and second anniversary reviews, we will multiply your enrolled affiliates' actual points earned under this agreement by 3 and 1.5, respectively, in order to derive a three-year license purchase history. If your actual points earned within a pool fall below the lowest price level (price level "A"), your enrolled affiliates will no longer be allowed to place orders from that pool under this agreement.

**Pools for which your price level is based on an Enterprise Enrollment.** For any pool for which you exercised the option on the Select Volume Forecast Form to establish your initial price level based on an Enterprise Enrollment, as defined in that Form (see "Option 2" of that Form), your initial price level for that pool under this agreement will be the price level for that same pool in the Enterprise Enrollment. While that Enterprise Enrollment is in effect, your price level for a particular pool will not be subject to the annual adjustments described in the preceding paragraph, but may be adjusted on an anniversary of the effective date of this agreement to reflect any change that has occurred in the price level for that pool in the Enterprise Enrollment. However, if the Enterprise Enrollment is terminated or expires during the term of this agreement, your price level will be reviewed annually, starting with the anniversary of the effective date of this agreement following such termination or expiration, and may be adjusted based on actual points earned, as described in the paragraph above.

**c. Choosing, maintaining or changing a reseller.** Each enrolled affiliate must choose and maintain a reseller authorized in the enrolled affiliate's area. Resellers are authorized to resell our product licenses, but act independently and have no authority to bind us. If we discontinue a reseller, the enrolled affiliate must choose a replacement. If an enrolled affiliate intends to change its reseller, the enrolled affiliate must submit written notice to us and the former reseller, on a form that we provide, at least 30 days prior to the date on which the change is to take effect. In case of a change of reseller, the enrolled affiliate is responsible for ensuring that all its obligations to the former reseller are met.

### **3. How to order product licenses.**

- a. Placing orders.** Each enrolled affiliate must submit orders for all copies of any products it or its affiliates run under its enrollment. Orders must be submitted in the month in which those copies are first run. Unless the enrolled affiliate is eligible to order just Software Assurance as described below, each order must be for either a License or L&SA. Each enrolled affiliate must place orders through the enrolled affiliate's reseller. Price and payment terms for all licenses ordered will be determined by agreement between the enrolled affiliate and its chosen reseller.

**When is the enrolled affiliate eligible to order just Software Assurance?** An enrolled affiliate may order Software Assurance for copies of a product, without the need to simultaneously order a new License for those copies, in the following circumstances:

- At the beginning of a new enrollment, the enrolled affiliate may order Software Assurance for copies of products for which the enrolled affiliate has previously obtained perpetual licenses through Upgrade Advantage, Software Assurance or any similar upgrade protection, so long as (i) the new enrollment becomes effective no later than one day following the expiration of that upgrade protection, and (ii) the enrolled affiliate places its Software Assurance order at the time it submits its new enrollment to its reseller.
- During the term of its enrollment (including any renewal term), an enrolled affiliate may be eligible to order Software Assurance under its enrollment for copies of certain products licensed through retail sources or from an original equipment manufacturer (OEM), provided that the enrolled affiliate places its order within the required time frame. The Product List identifies those products that may be enrolled in Software Assurance as described in this subsection and the applicable time frame for placing an order.
- An enrolled affiliate may also order Software Assurance in any other circumstances expressly permitted in the Product List.
- An enrolled affiliate may renew Software Assurance ordered under its enrollment at the time it renews that enrollment, as described in subsection 10(d) (How to renew this agreement).

In all such cases, the enrolled affiliate must order Software Assurance for the remaining initial enrollment or renewal term.

- b. Invoices and payments.** The prices at which we will invoice each enrolled affiliate's reseller will be based upon the applicable price level under this agreement. For any orders for Software Assurance or L&SA, if the enrolled affiliate elects to spread its payments over the applicable initial enrollment or renewal term rather than paying in a lump sum, it may make this election with its reseller. In such cases, we will invoice the enrolled affiliate's reseller in equal installments, the first installment upon receipt of the order and subsequent installments on each remaining anniversary of the effective date of this agreement occurring during the initial enrollment or renewal term in which the order was placed. Any amounts for Licenses only (i.e. without accompanying Software Assurance) will be invoiced to the enrolled affiliate's reseller in full upon receipt of the order.
- c. Reporting country of use.** On all orders, the enrolled affiliate must report the countries where the enrolled affiliate or its affiliates run the products licensed under this agreement and the approximate number of copies run in each of those countries. This information is for our internal use only.
- d. Privatization.** If an enrolled affiliate intends to transfer more than ten percent of its computers in connection with a privatization of its government operations, and as a result it would like to transfer the copies of the products running on those computers prior to the expiration of its enrollment, we will work with that enrolled affiliate in good faith to arrange for acceleration of any remaining payments for those copies run pursuant to Software Assurance or L&SA and to allow for the transfer of perpetual licenses for such copies as described in section 9 (Transferring licenses). Any perpetual licenses obtained as described in this paragraph will be for the latest version of the products available as of the later of (i) the date on which the enrolled affiliate has completed payment, or (ii) the date of transfer.

#### **4. How to confirm orders.**

We will publish information about orders placed by each enrolled affiliate, including an electronic confirmation of each order, in a password-protected site on the World Wide Web at <http://licensing.microsoft.com> or a successor site that we identify. Upon our acceptance of this agreement and enrollments entered into under this agreement, the contact identified for this purpose on the cover page will be provided access to this site.

#### **5. License grant – what your enrolled affiliates are licensed to run.**

At any time after its enrollment effective date, each enrolled affiliate may run as many copies as it chooses, of any available products it chooses, provided that it submits orders for all such copies as required in subsection 3(a) (Placing orders). Each enrolled affiliate may run in place of any product version it licenses under this agreement a prior version or different language version (so long as the License, L&SA or Software Assurance for that different language version is available at the same or a lower price than the price paid for the corresponding license type for the version ordered) of the same product. If an affiliate runs copies of products under an enrolled affiliate's enrollment, those copies are sublicensed from that enrolled affiliate subject to the terms of this agreement. These rights apply to the licenses obtained under an enrollment and are not related to any order or fulfillment of software media.

**License only.** An enrolled affiliate's right under this agreement to run copies of any product for which it orders only a License is temporary until the enrolled affiliate has paid for that License in full. Thereafter, the enrolled affiliate will have a perpetual license to run the number of copies ordered in the version ordered.

**L&SA or Software Assurance.** An enrolled affiliate's right under this agreement to run copies of any product for which it orders L&SA or Software Assurance is temporary until one of the following occurs:

- (i) the enrolled affiliate has paid all installments of the price for such coverage, and the applicable initial enrollment or renewal term during which such product licenses were ordered has expired or been renewed; or
- (ii) the enrolled affiliate is otherwise eligible for perpetual licenses either pursuant to subsection 3(d) (Privatization) or upon early termination as provided in subsection 10(c) (Effect of termination or expiration).

Thereafter, the enrolled affiliate will have perpetual licenses to run the latest version available as of such date of expiration, renewal or termination (or any prior version), for the number of copies ordered during the applicable initial enrollment term or renewal term. In the case of early termination as provided in subsection 10(b) (Termination), if an enrolled affiliate chooses only to pay amounts due and payable as of the termination date, then the enrolled affiliate will instead have perpetual licenses for the number of copies specified in subsection 10(c) (Effect of termination or expiration). Any perpetual licenses received through Software Assurance supersede and replace the underlying perpetual licenses for which that Software Assurance coverage was ordered.

All perpetual licenses acquired under this agreement remain subject to the terms of this agreement and the applicable product use rights.

This agreement, the applicable enrollment, the enrolled affiliate's order confirmation described in section 4 (How to confirm orders) above, and any documentation evidencing transfers of licenses as described in subsection 9(a) (How to transfer), together with proof of payment, will be the enrolled affiliate's evidence of all licenses obtained under its enrollment.

#### **6. How to know what product use rights apply.**

Except as otherwise described below, an enrolled affiliate's use of any product that it licenses from us is governed by product use rights specific to each product and version. The product use rights applicable to products licensed under each enrollment are as follows.

- a. For latest versions available as of an enrollment effective date.** For the latest version of any product available on or before the enrollment effective date, the product use rights in effect on the enrollment effective date for that product and version apply.
- b. For versions and products that become available after an enrollment effective date.** For any version of any existing product, or any new product, first made available after the enrollment effective date, the product use rights in effect on the date on which the version or product first becomes available apply.
- c. For versions of a product that predate the latest version available as of an enrollment effective date.** If an enrolled affiliate is using a version of any product licensed under its enrollment that became available prior to the version that was current on the enrollment effective date, the enrolled affiliate's use of the earlier version will be governed by the product use rights that would apply if the enrolled affiliate were using the version licensed under the enrollment, or in the case of Software Assurance or L&SA, the latest version that is or becomes available at any time during its enrollment.
- d. Cross-language use rights.** If an enrolled affiliate is using any different language version of any product licensed under its enrollment, the enrolled affiliate's use of the different language version will be governed by the product use rights for the version licensed under the enrollment.
- e. Right to reassign Software Assurance coverage to replacement computers.** An enrolled affiliate may reassign Software Assurance coverage ordered for an underlying desktop operating system product installed on one computer to a replacement computer so long as (i) that replacement computer is licensed to run the latest version of the desktop operating system available as of the date of the reassignment, and (ii) the enrolled affiliate removes from the original computer any desktop operating system upgrades that were installed under the reassigned Software Assurance coverage. An enrolled affiliate may not otherwise separate Software Assurance coverage or any right to run any version of any product acquired through such coverage from the underlying license for which it is ordered.
- f. Microsoft's commitment on use rights.** We will not change an enrolled affiliate's product use rights for any version of a product after it becomes available to that enrolled affiliate under its enrollment.

We will provide each enrolled affiliate with a copy of the applicable product use rights or will make them available either by publication on the World Wide Web, at <http://microsoft.com/licensing> or at a successor site that we identify, or by some other reasonable means. You acknowledge that you and your affiliates have access to the World Wide Web. We do not transfer any ownership rights in any licensed product, and we reserve all rights not expressly granted. In lieu of your obligation to indemnify us under various provisions of the product use rights, you will be responsible for any cost or damages arising from any claim to which your indemnity obligation would otherwise apply.

## **7. Software Assurance Membership.**

Each enrolled affiliate that commits to obtaining either L&SA or Software Assurance for all copies of all products licensed within a designated product pool throughout the term of its enrollment (including any renewal) qualifies for Software Assurance Membership. Membership may entitle the enrolled affiliate to special benefits. Enrolled affiliates that make the commitment for more than one pool may be entitled to further benefits. Each enrolled affiliate that elects to become a Software Assurance Member must indicate its selection of the Software Assurance Membership option, and the product pool(s) for which it is making the required commitment, on its enrollment. Software Assurance Membership benefits may be subject to additional terms and conditions. A description of Software Assurance Membership benefits and additional details are available from the enrolled affiliate's reseller or Microsoft account manager.

## **8. Making copies of software.**

- a. Copies necessary for internal deployment.** Each enrolled affiliate may make as many copies of the products licensed as necessary to distribute the products to its users. All copies of any product must be true and complete copies (including copyright and trademark notices) and be made from CD-ROMs, disk sets or a network source acquired from or made available by a Microsoft approved fulfillment source for that product. Each enrolled affiliate may also have a third party make or distribute copies in its place, but the enrolled affiliate is responsible for third-party actions to the same extent it would be if the third party were its employee. You and your affiliates must make reasonable efforts to make employees, agents and other individuals running a product aware that the product is licensed from us and may only be run or transferred subject to the terms of this agreement.
- b. Copies for training, evaluation and back-up.** During the term of its enrollment (including any renewal), each enrolled affiliate and any affiliate to which it sublicenses may (i) run up to 20 complimentary copies of any product in a dedicated training facility on their premises; (ii) run up to 10 complimentary copies of any product for a 60-day evaluation period; and (iii) make and retain one complimentary copy of any licensed product for back-up or archival purposes for each of their distinct geographic locations.
- c. Re-imaging rights.** If an enrolled affiliate or any affiliate to whom it sublicenses has licensed products from an original equipment manufacturer (OEM), through a retail source or under any Microsoft program other than this Select License program, it may use copies made from the media provided under the enrolled affiliate's enrollment in place of any copies made from the media provided through that separate source, so long as it complies with the following restrictions.
- (i) The enrolled affiliate must have obtained a separate license from the separate source for each copy being replaced.
  - (ii) The product, language, version and all components (in the case of product suites, such as Office) of the copies made from the media provided under its enrollment must be identical to the product, language, version and all components of the copies they replace.
  - (iii) In the case of copies licensed from an original equipment manufacturer (OEM) or through a retail source, in addition to the other conditions outlined in this subsection 8(c), the product type (e.g. upgrade or full license) of the copies made from the media provided under its enrollment must be identical to the product type of the copies they replace. However, an enrolled affiliate may use copies of an operating system made from the media provided under its enrollment in place of copies of the same operating system obtained from a separate source, even though they may be of different types (i.e. one may be an upgrade and the other a full license), provided that the product, language and version are identical.

The use of any copies made under this subsection 8(c) is subject to the terms and use rights provided with the copies being replaced, and nothing in this subsection creates or extends any warranty or support obligation.

## **9. Transferring licenses.**

- a. How to transfer.** An enrolled affiliate may transfer its perpetual licenses to an affiliate, or to an unaffiliated third party in connection with a privatization of enrolled affiliate operations, as long as the enrolled affiliate provides prior written and signed notice, on a form that we provide, that includes: (i) the applicable enrollment number; (ii) the quantity of licenses being transferred by product and version; (iii) the name, address and contact information of the transferee; and (iv) any other information that we may reasonably request.

For all other transfers of licenses, our written consent is required. We will not withhold our consent unreasonably. No license transfer will be valid unless the enrolled affiliate provides to



the transferee, and the transferee accepts in writing the applicable product use rights (as provided in subsections 6(a) (For latest versions available as of an enrollment effective date) and (b) (For versions and products that become available after an enrollment effective date), use restrictions, limitations of liability, and the transfer restrictions of this section 9. Any transfer made in violation of the requirements or restrictions in this section will be void.

- b. When transfers are not permitted.** An enrolled affiliate may not transfer (i) licenses on a short-term basis (either to third parties or by reassignment to different users or devices internally), (ii) temporary rights to use products, (iii) Software Assurance coverage, (iv) perpetual licenses for any version of any product acquired through Software Assurance separately from the underlying perpetual licenses for which that Software Assurance coverage was ordered; or (v) upgrade licenses for a desktop operating system product separately from the underlying operating system license or from the computer system on which the product was first installed.

## **10. Term, termination and renewal.**

- a. Term.** This agreement will remain in effect for 36 full calendar months following the effective date unless it is renewed or terminated earlier as described below. All enrollments entered into under this agreement will expire or terminate upon the expiration or termination of this agreement, unless terminated earlier as described below.
- b. Termination.** Either party to an enrollment may terminate it if the other party materially breaches its obligations under this agreement, including any obligation to submit orders or pay amounts owed (even if such non-payment is caused by non-appropriation of funds). Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days notice and opportunity to cure. If we give such notice to an enrolled affiliate, we will give you a copy of that notice as well and you agree to assist in attempting to resolve the problem. If the problem also affects other enrollments and cannot be resolved between you and us within a reasonable period of time, we may also terminate this agreement and all other enrollments under it, unless the basis for termination of the enrollment is non-appropriation of funds to the enrolled affiliate, in which event we may only terminate the affected enrollment(s). If an enrolled affiliate ceases to be your affiliate, you must promptly notify us of this fact, and we may terminate its enrollment.
- c. Effect of termination or expiration.** Upon expiration or termination of this agreement or any enrollment, the enrolled affiliate must order licenses for all copies of products it or its affiliates have run under its enrollment for which the enrolled affiliate has not previously submitted an order. Except as provided in the next paragraph, in the event of termination all unpaid installments of the price for any licenses will immediately become due and payable, and the enrolled affiliate will be entitled to perpetual licenses only after all such payments have been made.
- If (i) an enrolled affiliate terminates its enrollment as a result of our breach, (ii) we terminate an enrolled affiliate's enrollment because it has ceased to be your affiliate, or (iii) we terminate an enrollment for non-payment due to non-appropriation of funds, then the enrolled affiliate will have the following options. It may immediately pay the total remaining amount due, including all installments, in which case the enrolled affiliate will have perpetual licenses for all copies of the products it has ordered. As an alternative, it may pay only amounts due and payable as of the termination date, in which case the enrolled affiliate will have perpetual licenses for (i) all copies of all products for which payment has been made in full, and (ii) the number of copies of products for which payment has been made in installments that is proportional to the amount that has been paid as of the termination date.
- d. How to renew this agreement.** We will provide you with 60 days prior written notice of expiration of the initial agreement or renewal term advising you of your renewal options. You may have the option to renew this agreement for successive terms of 12 or 36 full calendar months. When you renew this agreement all enrollments under this agreement are automatically renewed.

We and our affiliates will not unreasonably refuse to renew this agreement or reject any renewal order. However, we may make a change to the Select License program that will make it necessary for you and your enrolled affiliates to enter into new agreements and enrollments.

**Placing renewal orders.** If an enrolled affiliate wishes to renew Software Assurance for any copies previously covered under its enrollment, it must submit a renewal order for those copies for the entire renewal term within 30 days after the previous term expired. Each renewal term will start the same day following expiration of the prior term. Upon renewal of this agreement, an enrolled affiliate will not be eligible to order Software Assurance coverage for any copies of any products for which it obtained only a License without first acquiring L&SA.

**Consequences of non-renewal.** If you elect not to renew this agreement, or if an enrolled affiliate fails to renew Software Assurance coverage for any copies of any product licensed under an enrollment, and if the enrolled affiliate otherwise allows Software Assurance for those copies to lapse, then the enrolled affiliate will not be permitted to order Software Assurance for those copies later without first acquiring L&SA.

## **11. Restrictions on use.**

An enrolled affiliate may not:

- Separate the components of a product made up of multiple components (in the case of product suites, such as Office) by running them on different computers, by upgrading or downgrading them at different times, or by transferring them separately, except as otherwise provided in the product use rights;
- Rent, lease, lend or host products, except where we agree by separate agreement;
- Reverse engineer, de-compile or disassemble products, except to the extent expressly permitted by applicable law despite this limitation; or
- Transfer licenses to, or sublicense, products to the U.S. Government.

Products licensed under this agreement are subject to U.S. export jurisdiction. You agree to comply with all applicable international and national laws that apply to these products, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting>.

## **12. Confidentiality.**

Subject to the requirements of your public records law, if any, the terms and conditions of this agreement are confidential. Neither you nor we will disclose such terms and conditions, or the substance of any discussions that led to them, to any third party other than your or our affiliates or agents, or to your designated or prospective resellers who: (a) have a need to know such information in order to assist in carrying out this agreement; and (b) have been instructed by you or us that all such information is to be handled in strict confidence.

## **13. Warranties.**

- a. **Limited product warranty.** We warrant that each version of a product will perform substantially in accordance with our user documentation. This warranty is valid for a period of one year from the date an enrolled affiliate first runs a copy of the version. To the maximum extent permitted by law, any warranties imposed by law concerning the products are limited to the same extent and the same one-year period. This warranty does not apply to components of products that an enrolled affiliate is permitted to redistribute under applicable product use rights, or if failure of the product has resulted from accident, abuse or misapplication. If you notify us within the warranty period that a product does not meet this warranty, then we will, at our option, either (i) return the price paid for the product or (ii) repair or replace the product. To the

maximum extent permitted by law, this is your exclusive remedy for any failure of any product to function as described in this subsection.

- b. NO OTHER WARRANTIES.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM AND EXCLUDE ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, OTHER THAN THOSE IDENTIFIED EXPRESSLY IN THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE PRODUCTS OR RELATED MATERIALS. WE WILL NOT BE LIABLE FOR ANY SERVICES OR PRODUCTS PROVIDED BY THIRD PARTY VENDORS, DEVELOPERS OR CONSULTANTS IDENTIFIED OR REFERRED TO YOU BY US UNLESS SUCH THIRD-PARTY PRODUCTS OR SERVICES ARE PROVIDED UNDER WRITTEN AGREEMENT BETWEEN YOU AND US, AND THEN ONLY TO THE EXTENT EXPRESSLY PROVIDED IN SUCH AGREEMENT.

#### **14. Defense of infringement and misappropriation claims.**

We will defend you against any claims made by an unaffiliated third party that any product or fix infringes its patent, copyright, or trademark or misappropriates its trade secret, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent). You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance in defending the claim, and we will reimburse you for reasonable out of pocket expenses that you incur in providing that assistance. The terms "misappropriation" and "trade secret" are used as defined in the Uniform Trade Secrets Act

Our obligations will not apply to the extent that the claim or adverse final judgment is based on (i) your running of the product or fix after we notify you to discontinue running due to such a claim; (ii) your combining the product or fix with a non-Microsoft product, data or business process; (iii) damages attributable to the value of the use of a non-Microsoft product, data or business process; (iv) your altering the product or fix; (v) your distribution of the product or fix to, or its use for the benefit of, any third party; (vi) your use of our trademark(s) without express written consent to do so; or (vii) for any trade secret claim, your acquiring a trade secret (a) through improper means; (b) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (c) from a person (other than us or our affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret. You will be responsible for any costs or damages that result from these actions.

If we receive information concerning an infringement claim related to a product or fix, we may, at our expense and without obligation to do so, either (i) procure for you the right to continue to run the allegedly infringing product or fix, or (ii) modify the product or fix or replace it with a functional equivalent, to make it non-infringing, in which case you will stop running the allegedly infringing product or fix immediately. If, as a result of an infringement claim, your use of a product or fix is enjoined by a court of competent jurisdiction, we will, at our option, either procure the right to continue its use, replace it with a functional equivalent, modify it to make it non-infringing, or refund the amount paid and terminate the license for the infringing product or fix.

If any other type of third party claim is brought against you regarding our intellectual property, you must notify us promptly in writing. We may, at our option, choose to treat these claims as being covered by this section. This Section 14 provides your exclusive remedy for third party infringement and trade secret misappropriation claims.

#### **15. Limitation of liability.**

- a. Limitation.** There may be situations in which you or an enrolled affiliate have a right to claim damages or payment from us. Except as otherwise specifically provided in this subsection, whatever the legal basis for the claims, our liability will be limited, to the maximum extent permitted by applicable law, to direct damages up to the amount you or the enrolled affiliate

have paid for the product giving rise to the claims. In the case of free product or code you or an enrolled affiliate are authorized to redistribute to third parties without separate payment to Microsoft, our total liability to you or the enrolled affiliate will not exceed US\$5000. The limitations contained in this paragraph will not apply with respect to the following in connection with the performance of this agreement:

- (i) our obligations under Section 14 to defend third party claims of patent, copyright or trademark infringement or trade secret misappropriation, and to pay damages resulting from any final adjudication (or settlement to which we consent) of such claims;
  - (ii) our liability for damages for gross negligence or willful misconduct, to the extent caused by us or our agent and awarded by a court of final adjudication; and
  - (iii) our obligations under section 12 (confidentiality).
- b. No liability for certain damages.** To the maximum extent permitted by applicable law, neither party nor any of its affiliates or suppliers will be liable for any indirect damages (including, without limitation, consequential, special or incidental damages, damages for loss of profits or revenues, business interruption, or loss of business information) arising in connection with any agreement, product, fix or service, even if advised of the possibility of such damages or if such possibility was reasonably foreseeable. This exclusion of liability does not apply to either party's liability to the other for violation of its confidentiality obligation or of the other party's intellectual property rights.
- c. Application.** Except as specified expressly in this Section 15, the limitations on and exclusions of liability for damages in this agreement apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory.

## **16. Verifying Compliance.**

You must keep records relating to the products you and any affiliate run. We have the right to verify compliance, at our expense, during the term of this agreement and for a period of one year thereafter. To do so, we will engage an independent accountant from a nationally recognized public accounting firm, which will be subject to a confidentiality obligation. Verification will take place upon not fewer than 30 days notice, during normal business hours and in a manner that does not interfere unreasonably with your operations. As an alternative, we may require you to accurately complete our self-audit questionnaire relating to the products you and any affiliates use. You will have the right to conduct a self-audit prior to any third-party audit if (a) the governor of your state has issued an executive order (or state legislation exists) requiring software licensing compliance statewide and for state-funded agencies (including local governments), and (b) your state has adopted and implemented a statewide licensing compliance software asset management program reasonably acceptable to Microsoft. If verification or self-audit reveals unlicensed use of products, you must promptly order sufficient licenses to permit all product usage disclosed. If material unlicensed use is found (license shortage of 5% or more), you must reimburse us for the costs we have incurred in verification and acquire the necessary additional licenses as single retail licenses within 30 days. If we undertake such verification and do not find material unlicensed use of products, we will not undertake another verification of the same entity for at least one year. We and our auditors will use the information obtained in compliance verification only to enforce our rights and to determine whether you are in compliance with the terms of this agreement. By invoking the rights and procedures described above, we do not waive our rights to enforce this agreement or to protect our intellectual property by any other means permitted by law.

## **17. Miscellaneous.**

- a. Notices.** All notices, authorizations, and requests given or made in connection with this agreement must be sent by post, express courier, facsimile, or email to the addresses and

numbers indicated in the applicable cover page to this agreement. Notices will be deemed delivered on the date shown on the postal return receipt or on the courier, facsimile or email confirmation of delivery.

- b. Assignment.** This agreement may be assigned by either party only to an affiliate, but assignment will not relieve the assigning party of its obligations under the assigned agreement. If either party assigns this agreement or any enrollment, it must notify the other party of the assignment in writing.
- c. Severability.** If a court holds any provision of this agreement to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect and the parties will amend this agreement to give effect to the stricken clause to the maximum extent possible.
- d. Waiver.** No waiver of any breach of this agreement shall be a waiver of any other breach, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.
- e. Force Majeure.** To the extent that either party's performance is prevented or delayed, either totally or in part, for reasons beyond that party's control, then that party will not be liable, so long as it resumes performance as soon as practicable after the reason preventing or delaying performance no longer exists.
- f. Non-exclusivity.** This agreement and all enrollments under it are non-exclusive. Nothing contained in this agreement or any such enrollment requires you to license, use or promote Microsoft software or services exclusively. You may, if you choose, enter into agreements with other parties to license, use or promote non-Microsoft software or services.
- g. Entire agreement.** The documents identified on the cover page to this agreement constitute the entire agreement concerning the subject matter, and supersede any prior or contemporaneous communications. In the case of a conflict between any of these documents that is not resolved expressly in the documents, their terms will control in the following order: (i) these terms and conditions and the accompanying cover page; (ii) the Product List; (iii) the product use rights; and (iv) all other enrollments under this agreement. The terms of any purchase order or any general terms and conditions you or your affiliates maintain, other than those mandatory terms required by statute or regulation, do not apply. This agreement (except the Product List and the product use rights) can be changed only by an amendment signed by both parties.
- h. Survival.** Provisions regarding product use rights, restrictions on use, evidence of perpetual licenses, transfer of licenses, warranties, limitations of liability, confidentiality, compliance verification and obligations on termination or expiration will survive termination or expiration of this agreement or any enrollment.
- i. Independent contractors.** Resellers are independent contractors who act in their own name and for their own account; they have no authority to bind or impose any obligation or liability upon us.
- j. Applicable law; Dispute resolution.** The terms of this agreement will be governed by the laws of your state, without giving effect to its conflict of laws. Disputes relating to this agreement will be subject to applicable dispute resolution laws of your state.
- k. Copyright Violation.** Except to the extent you are licensed under this agreement, you will be responsible for your violation of our copyright in the products, including payment of license fees specified in this agreement for unlicensed use.

## Select Volume Forecast Form

(to be completed with your reseller or Microsoft account manager)

This Form is used to establish your price level for each product pool for the first year of this agreement.

To determine your initial price level, you must select one of the two options described below. When we refer to an "Enterprise Enrollment" in this Form, we mean either (i) a Microsoft Enterprise Select Agreement, or (ii) an enterprise enrollment under a separate Microsoft Select Master Agreement or a Microsoft Enterprise Agreement.

**When you must use Option 1.** If neither you nor an affiliate is party to an existing Enterprise Enrollment (nor is entering into an Enterprise Enrollment concurrently with this agreement), then you must use Option 1 to establish your initial price level for all product pools. Under Option 1, you must provide a good faith forecast of the number of points attributable to the licenses you will acquire from each product pool during the initial term of this agreement.

**When you may use Option 2.** If you or an affiliate is party to an existing Enterprise Enrollment (or is entering into an Enterprise Enrollment concurrently with this agreement), then you may use either Option 1 or Option 2. If you choose Option 2, then you must identify below those product pools for which you ordered at least one enterprise product under the Enterprise Enrollment. Your initial price level for each of those product pools will be the same price level for those product pools for which the party enrolled under the Enterprise Enrollment is currently qualified (based on its initial qualified desktop count for the current term). For any pool for which you did not order at least one enterprise product under the Enterprise Enrollment, you must provide a forecast of the number of points attributable to the licenses you will acquire from that product pool during the initial term of this agreement (in Option 2, Step 4).

By marking the corresponding box, select one of the below options and provide the requested information.

☒ **Option 1.** You must use this option if neither you nor an affiliate is party to an existing Enterprise Enrollment (nor is entering into an Enterprise Enrollment concurrently with this agreement).

Indicate below the number of points attributable to the licenses you forecast that you and your affiliates will acquire from each product pool during the initial term of this agreement. You do not need to acquire products from all product pools. Each product is assigned the number of points specified in the Product List.

Minimum Points for Price Level		Applications Pool (circle one if applicable)	Systems Pool (circle one if applicable)	Servers Pool (circle one if applicable)
A	1,500	A	A	A
B	12,000	B	B	B
C	30,000	C	C	C
D	75,000	D	D	D

## Select Volume Forecast Form

(to be completed with your reseller or Microsoft account manager)

☐ **Option 2.** You may use this option if either you or an affiliate is party to an existing Enterprise Enrollment (or is entering into an Enterprise Enrollment concurrently with this agreement).

**Step 1: Identify the Enterprise Enrollment.** Enter the Enterprise Enrollment number and expiration date required below. If you or an affiliate is entering into an Enterprise Enrollment concurrently with this agreement, we will provide the number. If you (or your affiliates) are party to more than one Enterprise Enrollment, you may only identify and receive credit for your orders under a single Enterprise Enrollment.

Enterprise Enrollment Number	Expiration Date

**Step 2: Identify the product pools from which an enterprise product has been licensed under the Enterprise Enrollment.**

Column 2 Mark the box(es) next to either the Enterprise Desktop Professional Platform or one or more of the individual enterprise products, to indicate which products have been licensed under the Enterprise Enrollment identified above.

1 Enterprise Product	2 √	3 Applicable Product Pool
Enterprise Desktop Professional Platform		All pools
Office Professional		Applications
Windows Desktop Operating System Upgrade		Systems
Core Client Access Licenses		Servers

**Step 3: Identify the corresponding Enterprise Enrollment price level.** In box 3(a) below, enter the number of qualified desktops initially included in the Enterprise Enrollment (or, if the Enterprise Enrollment has been renewed, the qualified desktop count as of that Enterprise Enrollment renewal date). In box 3(b) below, enter the price level that corresponds to the number of qualified desktops entered in box 3(a) using the chart below. This price level will be the same for all pools marked in step 2 above.

Qualified Desktops	Price Level
250 to 2,399	A
2,400 to 5,999	B
6,000 to 14,999	C
15,000 and above	D

Number of Qualified Desktops	3(a)
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Enterprise Enrollment Price Level	3(b)
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## Select Volume Forecast Form

(to be completed with your reseller or Microsoft account manager)

**Step 4:** Indicate below the number of points attributable to the licenses you forecast for pools from which no enterprise products were ordered under the Enterprise Enrollment. For each product pool not covered by the Enterprise Enrollment identified above (i.e. those product pools, if any, that you did not mark an enterprise product in Step 2 above), indicate below the number of points attributable to the licenses you forecast that you and your affiliates will acquire from that product pool during the initial term of this agreement.

Minimum Points for Price Level		Application Pool (circle one if applicable)	System Pool (circle one if applicable)	Server Pool (circle one if applicable)
A	1,500	A	A	A
B	12,000	B	B	B
C	30,000	C	C	C
D	75,000	D	D	D